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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,986	11/21/2003	Mang Yu	21865-002001 / 6502	3664
20985 7590 12/08/2010 FISH & RICHARDSON P.C. (SD) P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER SAIDHA, TEKCHAND	
			ART UNIT 1652	PAPER NUMBER
			NOTIFICATION DATE 12/08/2010	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

### **Advisory Action**

1. Amendment After-Final filed 11/18/2010 is entered. Claims 1-3, 6, 32-34, 47, 50, 54, 57-58, 61-74, 76-80, 82-93, 94-101 & 108-110 are present in this application.

Claims 1-3, 6, 32-34, 47, 61-74, 76-80 & 94-101 & 108-110 corresponding to the elected invention are under consideration in this Office Action.

2. **Claims withdrawn:**

Claims 50, 54, 57-58 & 82-93 remain withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. Applicant's arguments filed 11/18/2010 have been considered and not found to be persuasive. The reasons are discussed following the rejection(s).

4. Any objection or rejection of record which is not expressly repeated in this Office Action has been overcome by Applicant's response and withdrawn.

5. ***Pharmaceutical composition***

Claims 47, 72-73 & 76-79 previously rejected under 35 U.S.C. § 112, first paragraph, is withdrawn following reconsideration and Applicants' arguments in view of the general state of the art and evidence provided.

6. Claims 99-101 & 108-110 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 1, 6, 32-34, 61-65. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k). Irrespective of how the claims are directed to either to a compound or an isolated polypeptide, both are fusion constructs comprising the same or substantially similar elements - hence substantial duplicate of each other.

7. ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

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1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-3, 6, 32-34, 47, 61-74, 76-80 & 94-101 & 108-110 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-16 of USP 7807174 (previously copending Application No. 10/939,262), since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows:

The reasons have been explained before.

Applicants argue that without addressing its merits or conceding its propriety, this rejection will be addressed as appropriate upon indication that there is allowable subject matter in one or both applications.

The rejection is therefore maintained.

8. No claim is allowed.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tekchand Saidha whose telephone number is (571) 272 0940. The examiner can normally be reached on 8.30 am - 5.00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert B. Mondesi can be reached at (571) 272 0956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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